IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
WRIT PETITION NO.3606 OF 2006

1. Smt. Tulsabai Chandrakant Pawar (Paradhi)
2. Dipak Chandrakant Pawar (Paradhi) ...Petitioners.

V/s.

1.Maharashtra State Road Transport
& Anr. ...Respondents.

Shri Amol B. Desai for the Petitioners.
Shri G.S.Hegde for the Respondents.

CORAM: B.H.MARLAPALLE &
J.H.BHATIA, JJ.
DATE : 24th November, 2006.

P.C.:

1. Heard Shri Desai, the learned counsel for the petitioners.

2. The husband of the petitioner no.1 and the father of petitioner no.2, Late Shri Chandrakant Pawar (Paradhi) was in the employment of the Respondent-Corporation as a conductor and while in service, he died on 6-5-02 as a Tuberculosis patient. The petitioner no.1 submitted an application for compassionate appointment either for herself or for her son on 16-7-02. Subsequently, the Corporation called upon her to find out whether she would prefer to have her son on attaining his majority or her own case should

be considered for such employment vide its letter dated 8-11-02 and by her letter dated 26-12-2002, the petitioner no.1 communicated that her son's case be considered for a compassionate employment on attaining majority, which he attained on 15-11-2004. By her representation dated 11-2-05, she reminded the corporation to appoint her son, petitioner no.2 on compassionate appointment as per the scheme framed by the Respondent-Corporation for the same. As there was no response, she has approached us.

3. The Respondent-Corporation has filed affidavit-in-reply and has not disputed the correspondence between the parties including the application dated 15-11-04 submitted by the petitioner no.1. Corporation has contested the claim for compassionate appointment on the grounds that disciplinary enquiry was initiated against late Shri Chandrakant Pawar for serious acts of misconduct involving the misappropriation of the Corporation's revenue. The Domestic Tribunal had held him guilty and, therefore, he was issued with a second show-cause notice for the proposed dismissal from the service and instead of filing a reply, late Chandrakant Pawar approached the Labour Court and obtained the order of stay thereby restraining the Corporation from proceeding further and

more particularly, on proposed dismissal from the service. While this case was pending in the Labour Court, he died on 6-5-02 and,therefore, final action of dismissal could not be materialised. However, the competent authority issued the order on 19-9-02 declaring that the charges framed against him were proved. In short, the Corporation claims that the dismissal order was in offing after the Labour Court would vacate the stay and solely on account of his demise on 6-5-02, punishment of dismissal from the service could not be awarded against the late Shri Chandrakant Pawar. In the view of the Corporation, the petitioner's claim for compassionate appointment could not be considered for two reasons, namely, first that there was the disciplinary enquiry pending against him and he was already issued a second show-cause notice for the proposed dismissal from the service. Secondly, the employee died on 6-5-02 and the petitioner no.2 attained the majority on 15-11-04. Under the scheme of the Corporation, reservation for the appointment on compassionate ground is not envisaged and , therefore, such claim could not be considered.

4. We have perused the circular dated 16-2-94 issued by the Respondent-Corporation setting out the guide-lines for appointment on compassionate ground and

the said scheme is applicable to the wards of the employees who died while on active duty. Late Shri Chandrakant Pawar died of tuberculosis though while in service but it could not be stated that he died while on active duty. In the said circular, there is also a provision for appointment on compassionate ground to the wards of the employees who die while in service but not on duty and there is some waiting period for a minor ward enabling him to approach the Corporation with a request to consider his case for compassionate appointment on attaining majority. Notwithstanding the said provision, we are satisfied that the petitioners' case does not call for considerations for appointment on compassionate ground for the sole reason that punishment of dismissal was in the offing but for the stay granted by the Labour Court which was ex-parte, the order could not be issued before 6-5-02. We, therefore, do not find that this is an appropriate case to invoke our extraordinary powers under Article 226 of the Constitution of India and issue directions as prayed for appointment on compassionate ground against the respondents.

5. **The Petition** is, therefore, rejected summarily.

(J.H.BHATIA,J.) **(B.H.MARLAPALLE,J.)**